

*United States Court of Appeals
for the Second Circuit*



APPELLEE'S BRIEF

74-1433

To be argued by
ROBERT M. MAKLA

B
P/S

United States Court of Appeals For the Second Circuit

ANNE QUINN CORPORATION and EARL J. SMITH
& CO., INC., n/k/a U.S. BULK CARRIERS, INC.,
Plaintiffs-Appellees,

against

AMERICAN MANUFACTURERS MUTUAL INSURANCE
COMPANY,
Defendant-Appellant.

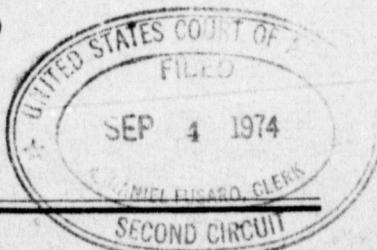
ON APPEAL FROM THE UNITED STATES DISTRICT COURT,
FOR THE SOUTHERN DISTRICT OF NEW YORK

BRIEF FOR CARGO INTERVENOR-APPELLEE

BAKER, NELSON & WILLIAMS
Attorneys for Cargo Intervenor-Appellee,
444 Madison Avenue,
New York, New York 10022

212-754-1300

O. TAFT NELSON
ROBERT M. MAKLA
Of Counsel



United States Court of Appeals

FOR THE SECOND CIRCUIT

ANNE QUINN CORPORATION and EARL J. SMITH
& CO., INC., n/k/a U.S. BULK CARRIERS, INC.,

Plaintiffs-Appellees,

against

AMERICAN MANUFACTURERS MUTUAL INSURANCE
COMPANY,

Defendant-Appellant.

BRIEF FOR CARGO INTERVENOR-APPELLEE

American Manufacturers Mutual Insurance Company appeals from a judgment entered January 29, 1974 by the United States District Court for the Southern District of New York (Bonsal, J.), declaring that appellant's ocean marine excess policy DE 3540 had been validly procured and provided appellees excess insurance coverage of their liability for bodily injury, death and property damage claims occasioned by the sinking of the "Smith Voyager" in December 1964 due to overloading. The judgment was based on the District Court's opinion (15a) dated December 14, 1973 and reported at 369 F.Supp. 1312. Jurisdiction of the appeal is based on Title 28 U.S. Code § 1291.

This court in 439 F.2d 109 (2 Cir. 1971) affirmed 293 F.Supp. 172 (SDNY 1969) denying plaintiffs-appellees herein the benefits of the Limitation Act, 46 U.S. Code sec. 183 *et seq.* for the sinking of the "Smith Voyager"



because of overloading with the privity and knowledge of the plaintiffs.

By stipulation the personal injury, death and cargo claimants were permitted to intervene as parties in the court below because of their potential interest in plaintiffs' claim against the defendant under the excess insurance policy issued to plaintiff by defendant. Proof of their damages in the limitation action in excess of payments already received by the primary P & I insurer have been deferred pending the outcome of the present action.

Cargo Intervenor adopts the brief of the personal injury and death Intervenors represented by Abraham E. Freedman and will not file a separate brief on this appeal. Cargo Intervenor requests that the lower court be affirmed in all respects.

Respectfully submitted,

BAKER, NELSON & WILLIAMS
444 Madison Avenue
New York, New York 10022
212-754-1300

Attorneys for Cargo Intervenor-Appellee

Of Counsel:

O. TAFT NELSON
ROBERT M. MAKLA



UNITED STATES COURT OF APPEALS
For the Second Circuit

X

ANNE QUINN CORPORATION and EARL J. : 74-1433
SMITH & CO., INC., n/k/a U.S. BULK
CARRIERS, INC.,

Plaintiffs-Appellees,

against

AMERICAN MANUFACTURERS MUTUAL
INSURANCE COMPANY,

Defendant-Appellant

:

X

STATE OF NEW YORK) ss:
COUNTY OF NEW YORK)

F. MARJORIE HOHLER, being duly sworn, deposes
and says that she is over the age of twenty-one years; that
on the fourth day of September, 1974, she served the within
Brief for Cargo Intervenor-Appellee on Zock, Petrie, Reid,
Curtin & Byres, 19 Rector Street, New York City; Thacher,
Proffitt & Wood, 40 Wall Street, New York City and Abraham E.
Freedman, 346 West 17th Street, New York City, in the respect-
ive offices and received acknowledgment from said firms that the
Brief had been served upon them.

M. Marjorie Hohler

Sworn to before me this

4th day of September, 1974

John P. Deller

JOHN P. DELLERA
Notary Public, State of New York
No. 03-5972225
Qualified in Bronx County
Commission Expires March 30, 1976

Sir :

Please take notice that the within is
a copy of a
which will be presented for settlement and
signature at the office of the Clerk of the
within named Court on the day of
, 197 , at o'clock M.
Dated: 197

Yours, Etc.,

BAKER, NELSON & WILLIAMS
444 Madison Avenue
New York, N. Y. 10022

To

UNITED STATES COURT OF APPEALS
For the Second Circuit

74-1433

ANNE QUINN CORPORATION and
EARL J. SMITH & CO., INC.

plaintiff-Appellees
against

AMERICAN MANUFACTURERS MUTUAL
INSURANCE COMPANY,
fendant-Appellant

A SAVIT OF SERVICE

Sir :

Please take notice that the within is
a copy of a
entered in the within entitled cause in the
office of the Clerk of the within named
Court on the day of , 197 .
Dated: 197

Yours, Etc.,

BAKER, NELSON & WILLIAMS
444 Madison Avenue
New York, N. Y. 10022

To

BAKER, NELSON & WILLIAMS
444 Madison Avenue
New York, N. Y. 10022
754-1300

AFFIDAVIT OF SERVICE BY MAIL

STATE OF NEW YORK, {
COUNTY OF

over the age of twenty-one years; that on the day of , 197 he served the
within upon . being duly sworn, deposes and says that he is
the herein, by depositing a true copy thereof, securely
enclosed in a post-paid wrapper, in a post office box regularly maintained by the United States Govern-
ment at in the City, County and State of New York, directed
to said herein at No. for that purpose upon the
N. Y., that being the address within the state designated by h preceding papers in this action.

Sworn to before me this

day of , 197